

REMARKS

The outstanding Official Action and the cited art have been carefully considered.

The examiner's comments concerning the election of species and restriction have been noted. It is urged respectfully that claims 26 to 28 depend from allowable claims and so should also be allowed at this time.

The examiner's objections to the specification have been considered. Specification amendments are being made to pages 11 and 12 of the specification to overcome objections and Fig. 15 of the drawings is being corrected to include the numeral 221 referred to at page 11, line 20 indicating the hollow valve stem interior shown in Fig. 15.

The dispenser of this application dispenses non-carbonated, consumable liquid (cram, milk and half and half in the particular preferred embodiment) while saving valuable counter space at a retail location and inexpensively assuring that there is no need to constantly wash dispenser parts for removal of residue subject to spoiling. Everything that touches the product is disposed of after a use.

The examiner's rejections of claims 1 - 3, 42 - 44, 51 - 54, 56 and 57 as anticipated by the patent to Devine are believed overcome by the amendments made to independent claims 1, 42 and 54.

The Devine patent relates to a dispenser for "viscous or semi-viscous substances" (col. 1, lines 19 and 20) that do not readily flow from a bag "by gravity" (col. 1, lines 15 to 18). The Devine patent teaches an above counter dispenser, and the Devine patent does not address the desirability of freeing-up counter space by moving the supply of the viscous or semi-viscous product to a below counter location. Neither does Devine teach whether such a viscous or semi-viscous product could successfully be moved from a below counter to an above counter dispensing location using Devine's pressurized air inflatable bladder pressing against a food bag.

Further, Devine passes the viscous or semi-viscous product he dispenses through a "valve member 26" shown in Figs. 2 and 5. This valve member is, it appears, a reusable or permanent part of the Devine dispenser. Note that Devine does not describe this as a part to be disposed with the used food bag. Commonly the valve type shown by Devine stays with the dispenser and is reused. Reuse of a part of the dispenser that contacts a food product is a sanitary concern that requires continual cleaning of the food-contacting part. This is one problem that the present

invention overcomes in that only the bag and the product delivery tube, which is disposable, touches the consumable liquid.

Claim 1 distinguishes the present invention from Devine, then, in two ways. First, the product container is "below a counter" and the product "dispensing relation above the counter." Second, liquid dispensing is "free of contact with any permanent part of the dispenser."

To be clear, applicant defines the expression "permanent part of the dispenser as "a non-disposable part of the apparatus that, unlike the collapsible liquid bag and the liquid delivery tube, is ordinarily reused from one refilling of the dispenser to the next." This is not true of Devine or of the other patents relied upon in the rejections in the outstanding Official Action. Consequently claim 1 is patentable over Devine and over any combination of Devine with the Nelson and Sardynski patents. Allowance of claim 1, and by their dependency, claims 2 and 3 is appropriate at this time.

Independent claim 42, also rejected as anticipated by Devine, has been amended to call for "means for receiving multiple collapsible containers," as well as "means ... for routing multiple liquid delivery tubes between the containers and the dispensing location," and "multiple inflatable bags" with "means for confining each of the inflatable bags proximate a collapsible container in force exerting relation to the collapsible container" This differs significantly from the Devine teaching which does not contemplate the dispensing of multiple food products.

Nor would it be obvious to modify Devine's above-counter apparatus to accommodate multiple collapsible food bags, inflatable bladders, tubes, etc. as that would greatly increase the amount of space being used above the counter, for not just the liquid supply, but for the inflatable bladders as well.

Likewise it would not be obvious to combine the Nelson and/or Sardynski teachings with those of Devine to arrive at the structure of claim 42. Both Nelson and Sardynski relate to dispensing carbonated beverages, beer or soda pop, in which a gas such as carbon dioxide is conventionally introduced into kegs, and the drink product, under pressure is directed from a remote location. This is ordinarily a keg room but can be below a counter as in Nelson.

Neither Nelson nor Sardynski address Devine's problem of dispensing a viscous or semi-viscous liquid that cannot be dispensed by gravity. The problem doesn't apply. There is no motivation to adopt features of Nelson or Sardynski for use in Devine's viscous or semi-viscous liquid dispenser. A suggested combination of that kind, as expressed in the rejection of other of

the claims in the application can only come from a reading of the present application. To say that the combination is obvious on that basis has long been recognized as an improper hindsight basis for rejection.

In addition, note that neither Nelson nor Sardynski relate to the dispensing of a product from a dispensable and replaceable bag using an inflating bladder or bag. Nothing these two patents teach suggests the use of multiple containers, expandable bags, tubes for viscous or semi-viscous liquid dispensing, which is Devine's sole purpose.

For the above reasons claims 42, as amended, is not anticipated by Devine and would not be obvious from the teachings of Nelson and/or Sardynski, nor could their teachings properly be combined as a matter of obviousness. Claim 42 and claims 43, 44, 51 - 53, by their dependency, are patentable over Devine, Nelson and Sardynski, and should, it is respectfully urged, be allowed at this time.

Independent claim 54, as amended, is not anticipated by Devine. Claim 54 relates to a dispenser for "non-carbonated consumable liquid" in which a "disposable liquid flow tube" has liquid forced through it from a collapsible container by a gas pressure activated force applicator "for dispensing from a tip of the tube."

Again, here, it is the tube, not a valve like Devine's valve 26, from which the liquid is dispensed. This makes it possible to discard the collapsed container and tube without having to wash a liquid-contacting valve like Devine's.

Note, too, that neither Nelson or Sardynski dispense their beer or soda pop from the tip of a liquid transporting tube. So even if it were obvious to combine the teachings of Devine, Nelson and Sardynski (which it is not for the reasons expressed above), no such combination would or could result in the features of claim 54. For the above reasons it is respectfully urged that claim 54, and by their dependency claims 56 and 57, are patentable over Devine, Nelson and Sardynski and should be allowed at this time.

Turning to the rejection of claims 4 - 9, 11 - 19, 22 - 25, 45, 55, 58 and 59 as obvious over Devine in view of Nelson, this rejection is respectfully traversed. Note that claims 4 - 5, 8 and 24 have been cancelled. Because some of the content of the cancelled claims now appears in claim 1, applicant urges that the rejection of claim 1 over these two patents would not be proper at this time as well.

For the reasons expressed above there is not the needed motivation to introduce features of Nelson's beer or soda pop bar into Devine's viscous or semi-viscous liquid dispenser. Only from a reading of this application would that combination be made and then only using the claims as a template. This is improper hindsight in addition to being an incorrect rejection on the basis of a lack of a teaching or motivation.

By their dependency, claims 6 - 9, 11 - 19, 22, 23 and 25 are patentable with claim 1. Their allowance at this time is respectfully requested.

The examiner's comments that it would be obvious to refrigerate the Devine dispenser based on Nelson only underscores the impropriety of combining the two. Refrigerating Devine's viscous or semi-viscous liquids is contrary to the express teaching of Devine who heats the product to facilitate its being dispensed. In addition to being contrary to the express teaching of Devine, the suggested refrigeration could very well make Devine's dispenser inoperative for its intended purpose. It would thus not be obvious.

Likewise making the delivery tube flexible in Devine would not alone have the improved results of claim 1 and all of its dependent claims, unless one further disposes of Devine's valve 26 and assures that the liquid touches no permanent dispenser part. But there is no teaching in Devine or Nelson (or Sardynski for that matter) for this.

Like claim 1, claims 6 - 9, 11 - 19, 22, 23 and 25 are patentable over the combination Devine and Nelson and should be allowed at this time.

Like independent claim 42, treated above, dependent claim 45 is patentable over the combination of Devine and Nelson. For the reasons given above the combination of the two patents is not obvious. In addition because claim 45 calls for a refrigeration unit, importing its content into Devine from Nelson is not obvious as previously stated. Claim 45, like its parent claim 42, is patentable over the combination of Devine and Nelson and should now be allowed.

By their dependency claims 55, 58 and 59 patentably differ from Devine and Nelson as does independent claim 54, treated above. The reasons why it is not appropriate to combine Devine and Nelson are set out in detail above. The reasons why, even if combined, the features of parent claim 54 would not be achieved are set forth as well. For these reasons, dependent claims 55, 58 and 59 patentably differ from Devine and Nelson as well.

Note that none of Devine, Nelson or Sardynski teach the disposable tube of claim 55 or why it has such an advantage in cleanliness and in employee time use. The pinch valve of claim

58 has the greatly improved result over Devine of not touching the dispensed product and the refrigeration of claim 59 again runs contrary to Devine's teaching.

Regarding the rejection of claims 29 - 33, 35 and 36 as obvious over Nelson in view of Sardynski, independent claim 29 has been amended to relate to a dispenser for "non-carbonated consumable liquids subject to spoilage." Neither of Nelson or Sardynski are related to this kind of dispenser. And as described above their teachings do not take into account the cleanliness consideration or the time consuming need for repeated washings of parts. Consequently neither Nelson nor Sardynski has claim 29's "disposable flexible delivery tube providing movement of liquid free of liquid contact with any permanent part of the dispenser." The two patents cannot be combined to provide that which is found in neither. Independent claim 29 and dependent claims 30 - 33, 35 and 36 are patentable over the Nelson and Sardynski patents and now should be allowed.

The examiner's comments on the obviousness of modifying Nelson to meet the terms of the claims 29 - 33, 35 and 36 have been noted, however applicant does not agree. No support is cited for the many "obvious" changes to which the examiner refers. Supporting documents are requested if these positions are maintained.

Turning next to the rejection of claims 39 - 41 as obvious over Nelson as modified by Sardynski as applied to claim 29 and further in view of Devine, the examiner states that it would be obvious to apply Devine's collapsible bag technique to the combined Nelson and Sardynski apparatus. Applicant is unaware of any packaging of a carbonated beverage, beer or soda pop in a flexible bag. This would not be obvious and it is applicant's belief that it would not work. The product itself is under pressure, either from carbonation or yeast action and could explode the bag unless an unhandy, heavy duty (and likely expansive) material were used for the bag. So this would not be obvious.

In addition, the modification of the combined Nelson and Sardynski structures suggested by the examiner would not result in the Nelson - Sardynski combination meeting the "non-carbonated," "subject to spoilage," or disposable flexible "delivery tube" limitations of parent claim 29 previously discussed. Consequently claims 39 - 41 are believed patentable over Nelson, Sardynski and Devine. Their allowance at this time is respectfully requested.

The examiner's indication of allowable subject matter in claims 10, 20, 21, 34, 37, 38 and 46 - 50 has been noted with appreciation. Amendments have been made to make these no longer dependent from rejected claims. Allowance of these claims at this time is respectfully requested.

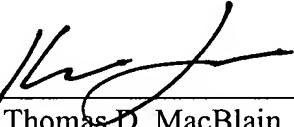
In view of all of the above, it is respectfully urged that this application is now in condition for allowance and early reexamination to that end is requested.

No extension of time or fee is believed necessary. However, the Commissioner is requested to grant any necessary extension and is authorized to charge any insufficiency to the deposit account number 070135 of attorneys for applicant. A duplicate copy of this page is enclosed.

Respectfully submitted,

GALLAGHER & KENNEDY, P.A.

Date: June 2, 2005

By: 

Thomas D. MacBlain
Reg. No. 24,583
Kaare D. Larson
Reg. No. 51,920
Attorneys for Applicant

Gallagher & Kennedy, P.A.
2575 East Camelback Road
Phoenix, AZ 85016
(602) 530-8088
tdm@gknet.com

Drawing Amendments:

Please replace sheet 15/16 of the drawings with the accompanying Replacement Sheet
15/16.